

**INTHEUNITEDSTATESDISTRICTCOURT
FORTHEEASTERNDISTRICTOFPENNSYLVANIA**

StephenFederico,
Plaintiff,

v.

CharterersMut.AssuranceAss'nLtd.,
Defendant.

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CIVILACTION
NO.00-398

MemorandumandOrder

YOHN,J.

August,2001

OnJune25,2001,theplaintiff,StephenFederico,filedamotionforreconsiderationor,in
thealternative,fortheentryofanorderallowingan immediateappealofthecourt'sJune13,
2001order. *See* Pl.'sMot.(Doc.No.19).Inthatorder,thecourtgrantedthemotiontocompel
arbitrationandstayproceedingspendingarbitrationfiledbythedefendant,CharterersMutual
AssuranceAssociationLimited["Charterers"]. *See* June13,2001Order(Doc.No.18).
Federicoarguesthatthecourt'sJune13,2001ordershouldbereconsideredbecauseitwouldbe
prohibitivelyexpensiveforFedericotoarbitratehisclaiminEngland,and,therefore,the
arbitrationagreementisunenforceable. *See* Pl.'sMot.2.Inthealternative,Federicoarguesthat
thecourtshouldenteranorderallowingan immediateappealofthecourt'sorderpursuantto28
U.S.C.§1292(b). *See* Pl.'sMot.3.Forthefollowingreasons,IwilldenyFederico'smotion.

BACKGROUND

The history of this dispute is outlined in the June 13, 2001 order. That history will only be repeated hereto the extent that it is necessary to resolve the issues before the court.

Federico was injured while working aboard a ship that was under charter to Gulf & Orient Steamship Line [“Gulf & Orient”]. *See* Am. Compl. ¶¶ 7-8. At that time, Charterers provided Gulf & Orient with marine protection and indemnity insurance. *See id.* ¶¶ 5-6.

On September 17, 1998, after a trial, this court entered a judgment in favor of Federico and against Gulf & Orient in the amount of \$540,671.00. *See id.* ¶ 11; Order of Sept. 17, 1998 (Docket Number 96-CV-6231) (Doc. No. 8, Ex. B). Because Gulf & Orient is insolvent and defunct, Federico filed this lawsuit against Charterers to attempt to collect that judgment. *See* Am. Compl. ¶ 12. Federico alleges that, under the marine protection and indemnity insurance agreement between Charterers and Gulf & Orient, Charterers is required to pay the judgment entered in favor of Federico and against Gulf & Orient. *See id.* ¶ 13. Federico also claims that Charterers is obligated to pay the judgment under the law of the Commonwealth of Pennsylvania. *See id.* ¶ 14.

In this court’s June 13, 2001 order, I treated Charterers’ motion to dismiss as a motion to compel arbitration and stay proceedings pending arbitration. After concluding that Federico’s third party cause of action was based exclusively on the marine protection and indemnity insurance contract between Charterers and Gulf & Orient, I concluded that the mandatory arbitration clause in that contract was applicable to these proceedings. Then, after concluding that Charterers had not waived its right to compel arbitration, I ordered the action stayed pending the outcome of arbitration in England.

STANDARD OF REVIEW

“The purpose of a motion for reconsideration is to correct manifest errors of law or fact to present newly discovered evidence.” *Harsco Corp. v. Zlotnick*, 779 F.2d 906, 909 (3d Cir. 1985). “Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly.” *Burger King Corp. v. New England Hood & Duct Cleaning Co.*, No. 98-3610, 2000 WL 133756, at *2 (E.D. Pa. Feb. 4, 2000) (quotation omitted). As a result, district courts will grant a motion for reconsideration in any of three situations: 1) the need to correct a clear error of law or to prevent manifest injustice; 2) the availability of new evidence not previously available; or 3) an intervening change of controlling law. *See NL Indus., Inc. v. Commercial Union Ins. Co.*, 65 F.3d 314, 324 n.8 (3d Cir. 1995); *New Chemic, Inc. v. Fine Grinding Corp.*, 948 F.Supp. 17, 18-19 (E.D. Pa. 1996).

DISCUSSION

I. Motion for Reconsideration

Federico argues that the court’s June 13, 2001 order should be reconsidered because it would be prohibitively expensive for Federico to arbitrate his claim in England, and, therefore, the arbitration agreement is unenforceable. *See* Pl.’s Mot. 2. In particular, Federico points out that the court did not consider whether the enforcement of the arbitration clause would be unconscionable due to the “prohibitive cost” it would impose on Federico. *See id.* at 3. In support of this argument, Federico has submitted basic evidence about his yearly income. *See* Federico Affidavit (Doc. No. 20).

Federico did not raise this argument in his opposition to Charterers' motion to compel arbitration and stay proceedings pending arbitration. Furthermore, the evidence that Federico has submitted in support of this argument is not newly discovered evidence. As noted above, "[t]he purpose of a motion for reconsideration is to correct manifest errors or law or fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). As a result, "[a] motion for reconsideration is not an opportunity for a party to present previously available evidence or new arguments." *Federal Deposit Ins. Corp. v. Parkway Executive Officer Center*, Civ. A. 96-121, Civ. A. 96-122, 1997 WL 611674, at *1 (E.D. Pa. Sept. 24, 1997) (citing *Corrigan v. Methodist Hosp.*, 885 F. Supp. 127, 127 (E.D. Pa. 1995)); see *McNeal v. Maritank Philadelphia, Inc.*, No. CIV. A. 97-0890, 1999 WL 80268, at *4 (E.D. Pa. Jan. 29, 1999) ("A motion for reconsideration may not be used to present a new legal theory for the first time or to raise new arguments that could have been made in support of the original motion."). Thus, I am precluded from considering Federico's affidavit and from acting on Federico's new argument.

Moreover, it is clear that Federico's new argument is untenable because a contract can only be found to be unconscionable based on conditions present at the time of the contract's formation. See 13 Pa. C.S.A. § 2302(a). Because the arbitration agreement is found within an insurance contract between Charterers and Gulf & Orient, the agreement can only be unconscionable with respect to those parties. Therefore, Federico's inability to arbitrate his claim in England would be irrelevant to the question of whether the insurance contract between Charterers and Gulf & Orient is unconscionable.

Even if I were to consider whether the contract was unconscionable, and even if Federico's inability to arbitrate his claim in England were relevant to the question of whether the

insurance contract is unconscionable, I would still deny Federico's motion for reconsideration. I would deny the motion because Federico has failed to show that the cost of arbitration in England would be prohibitive. In his affidavit, Federico made no proffer except as to his residence and employment. *See* Federico Affidavit (Doc. No. 20). Federico has not provided the court with any information regarding his inability to obtain counsel who, given that Federico is attempting to collect a \$540,671.00 judgment, would arbitrate this case in England on a contingency fee basis. Furthermore, Federico has not proffered any information on the costs of arbitration for which he might be responsible. Given that arbitrations should presumably only require Federico to be in England for a day or two, the cost of attending the arbitration would not be substantial, particularly in light of the fact that Federico is attempting to collect a \$540,671.00 judgment.

For the above stated reasons, I will deny Federico's motion for reconsideration.

II. 28 U.S.C. 1292(b)

In the alternative, Federico argues that the court should enter an order allowing an immediate appeal of the court's order pursuant to 28 U.S.C. § 1292(b). *See* Pl.'s Mot. 3. Section 1292(b) provides that:

When a district judge, in making in a civil action an order not otherwise appealable[], shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order"

Therefore, in order to obtain permission to appeal this court's June 13, 2001 order, Federico must

show that: 1) the order involved a controlling question of law; 2) there are substantial grounds for a difference of opinion on that question; and 3) the interlocutory appeal of the question may materially advance the ultimate termination of the litigation.

A. Controlling Question of Law

Federico alleges that this court's June 13, 2001 order involves the following controlling question of law: whether a forum selection clause contained in an arbitration agreement is enforceable against an individual who was not a party to the agreement. *See* Pl.'s Mot. 6-7. "In the Third Circuit, a controlling issue of law is one that would result in a reversal of a judgment after final hearing." *Federal Deposit Ins. Corp.*, 1997 WL 611674, at *3 (quotation omitted). *See Katz v. Carte Blanche Corp.*, 496 F.2d 747, 755 (3d Cir. 1974).

This court's June 13, 2001 order is dependent on the conclusion that Federico is subject to the arbitration clause contained in the insurance contract between Charterers and Gulf & Oriente even though Federico was not a party to that contract. As a result, Federico has shown that this court's June 13, 2001 order involves a controlling question of law.

B. Substantial Grounds for Difference of Opinion

Federico alleges that there are substantial grounds for a difference of opinion on the question of whether a forum selection clause contained in an arbitration agreement is enforceable against an individual who was not a party to the agreement. *See* Pl.'s Mot. 7. In particular, Federico claims that the cases cited by the Court in support of its decision "are clearly distinguishable from the case at bar" because the third parties/beneficiaries involved in those cases were "corporate entities" as opposed to "working individual(s)" like Federico. *Id.*

The assertion of this artificial distinction between "corporate entities" and "working

individual(s)” is insufficient to show that there are substantial grounds for a difference of opinion on the controlling question of law involved in the June 13, 2001 order. And, moreover, Federico has failed to point out any conflicting precedents to the court. Therefore, Federico has failed to show that there is a substantial ground for a difference of opinion on the controlling question of law involved in the June 13, 2001 order.

C. **Materially Advancing the Ultimate Termination of the Litigation**

Federico has failed to make any allegations as to how the immediate appeal of the controlling question of law involved in this case would materially advance the ultimate termination of this litigation. Therefore, Federico has failed to show that the interlocutory appeal of the controlling question of law may materially advance the ultimate termination of the litigation.

CONCLUSION

Federico argues that the court’s June 13, 2001 order should be reconsidered because it would be prohibitively expensive for Federico to arbitrate his claim in England. Because this is the first time that Federico has raised this argument, I am precluded from acting on it. Moreover, even if I were to consider whether the contract was unconscionable, I would still deny Federico’s motion. Therefore, I will deny Federico’s motion for reconsideration.

In the alternative, Federico argues that the court should enter an order allowing an immediate appeal of the court’s order pursuant to 28 U.S.C. § 1292(b). Because Federico has failed to show that: 1) there are substantial grounds for a difference of opinion on the controlling question of law involved in the June 13, 2001 order, and 2) interlocutory appeal of the question may

materially advance the ultimate termination of the litigation, I will deny his motion for entry of an order pursuant to 28 U.S.C. § 1292(b).

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CIVILACTION
NO.00-398

Order

ANDNOW,thisdayofAugust,2001,uponconsiderationofStephenFederico's
motionforreconsiderationor,inthealternative,forentryofanorderpursuantto28U.S.C.
1292(b)(Doc.No.19),andCharterers'responseinopposition(Doc.No.21),ITISHEREBY
ORDEREDthatStephenFederico'smotionisDENIED.

WilliamH.Yohn,Jr.,Judge